



LATE TESTIMONY

STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
<http://hawaii.gov/spo>

TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEE
ON
ECONOMIC REVITALIZATION & BUSINESS

February 03, 2011

8:00 AM

HB 352

RELATING TO STREAMLINING PROCUREMENT.

Chair McKelvey, Vice Chair Choy and committee members, thank you for the opportunity to testify on HB 352. This bill proposes to create a new section to HRS chapter 103D for contract award deadlines to be awarded within thirty days after bid opening date, limited to projects of the department of Hawaiian home lands and department of transportation. The bill further provides that:

1. An extension to the thirty days be permitted to allow for negotiations with the lowest responsible bidder if the procurement will result in benefits to the public;
2. Contracts for design professional services licensed under chapter 464 be awarded within forty-five days of the bid opening date;
3. The award deadline shall not apply if the lowest responsible bid exceeds available funding; and
4. The award deadline shall not apply to design-build (combining of design and construction into a single request for proposal) contracts.

The State Procurement Office does not support this bill.

Reviews of procurement documents are to ensure award will be made to the responsive and responsible bidder for procurements pursuant to §103D-302, competitive sealed bidding taking into consideration all factors to be evaluated such as specifications, qualifications, capability, compliance requirements, etc. On less complicated IFB solicitations the review, evaluation and award may be completed within 30 days, however, on more complex, detailed solicitations, all documents need to be verified prior to an award.

Awards for procurements pursuant to §103D-303, competitive sealed proposals after initial due date of proposals includes evaluation of proposals, discussions and or demonstrations, and may require best and final offers submittal, that requires further evaluations which will beyond the 30 days requirement to award. With the downsizing of government, these agencies may already be having resource issues affecting the review of the procurement documents on a timely basis. This review process may also be delayed not by the agency, but by the bidder not able to furnish the necessary documents in a timely manner such as compliance documents for tax clearance, labor compliance certificate and business registration requirements, and contractor licensing.

Procurement of professional services pursuant to §103D-304 is qualification based, and there is no bid opening. Statements of qualifications are requested by an agency and a review committee places the qualified applicants on a listing. When a need or project arises, a selection committee reviews the statements of qualifications, ranks the submittals, and begins negotiations with the first ranked provider. A time limitation for award is not conducive to the professional services procurement method.

This proposed bill would not accomplish the goal of striking a balance between expedited procedures and necessary accountability and transparency, and will likely compromise the evaluation process if award is required within a strict time period as these agencies will need to make award but contingent upon completing the requirements noted above. Additionally, if an agency is not able to meet this statutory timeline, then the solicitation would be invalid and may require re-solicitation, adding further delays to the process.

Thank you.

TESTIMONY OF
HAWAII PROCUREMENT INSTITUTE

LATE TESTIMONY

TO THE HOUSE COMMITTEE
ON
ECONOMIC REVITALIZATION AND BUSINESS

February 3, 2011
8:00 a.m.
HB 352, HD1

IN OPPOSITION OF HB 352, RELATING TO STREAMLINING PROCUREMENT

Chair McKelvey, Vice-Chair Choy, and Committee members, thank you for the opportunity to testify in opposition to HB 352.

This Bill will create a new section that requires the Department of Hawaiian Home Lands and the Department of Transportation to award contracts for projects within thirty days of the bid opening date. It would also require that contracts for design professional services be awarded within forty-five days of the bid opening date.

Although we support the intent of ensuring prompt awards, we oppose this Bill. This Bill will not adequately address the problem of delayed contract awards in sealed bid procurement, and it improperly extends to award methods other than sealed bids.

Late contract awards unfairly impose risks of loss on contractors who must submit fixed bid prices in all section 103D-302 sealed bid procurements. To perform the contract, contractors must purchase supplies and materials whose prices can be volatile (such as oil and copper). When an agency delays award, the price of the materials may have increased significantly above prices when the bid was submitted. Because of the increased materials prices, the contractor's actual costs may exceed the bid price. As a result, some contractors are unwilling to assume the risk of loss caused by agency delays. To protect themselves, contractors may submit excessive bid prices or refuse to compete at all. In either case, the taxpayer is disadvantaged.

To address this problem, we suggest you ensure the Bill applies to all agencies and all forms of contracts for goods, services, and construction. We recommend you revise this Bill as follows:

- Ensure application of the rule to all agencies and all contracts by amending section 103D-302 (Sealed bids) to require that: "All contract awards shall be made within sixty days of the bid opening date, except as may be provided in rules issued by the procurement policy board."
- Extend the fairness intent to all agencies and all contracts awarded through sealed proposal methods by amending section 103D-303 (Sealed Proposals) to

require that: "When contract award is not made within sixty days of the proposal submission date, the procurement officer shall allow offerors to submit revised price proposals through procedures provided in rules issued by the procurement policy board."

- Because professional design services contractors submit "Statements of Qualifications" under section 103D-304 and do not submit "bids," the portion of this Bill requiring award within forty-five days of "bid opening" is unworkable. Further, the intent of section 103D-304 is to allow for prior creation of a ranked pool of qualified providers from which selections and contract awards can be made as needs arise. This Bill would defeat the benefits of a standing pool of providers afforded under the current law. Accordingly, the committee should delete this Bill's reference to time of award in contracts for professional design services.
- Because design-build contracts can also be affected by volatile commodity prices, the committee should amend this Bill to allow the procurement policy board to create rules and clauses to ensure fairness in the longer and more complex evaluation procedures for such contracts. Accordingly, this Bill should be revised to provide in an appropriate section of Chapter 103D that: "The procurement policy board shall establish procedures in rules and price adjustment clauses to ensure price fairness to contractors where evaluation and award may extend beyond sixty days from the date set for submission of the offered contract price."

Thank you for your efforts to improve procurement practices in Hawai'i and for affording us the opportunity to submit testimony.

NEIL ABERCROMBIE
GOVERNOR
STATE OF HAWAII



ALBERT "ALAPAKI" NAHALE-A
CHAIRMAN DESIGNATE
HAWAIIAN HOMES COMMISSION

ROBERT J. HALL
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879

TESTIMONY OF ALAPAKI NAHALE-A, CHAIRMAN DESIGNATE
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS
ON **HB 352, RELATING TO STREAMLINING PROCUREMENT**

February 3, 2011

Chair McKelvey, Vice-Chair Choy and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) supports HB 352 which helps expedite the contract awards process for DHHL projects.

Representatives from the department and the Hawaiian Homes Commission participated in the development of this legislative proposal with the task force on construction that was established in 2009. This measure will support our department's operations as a major housing developer in Hawai'i and, in turn, will help native Hawaiian families sooner realize their homeownership goals.

We respectfully urge your committee to pass legislation like this that helps balance expedited procurement procedures with necessary accountability and transparency to help DHHL move projects forward. Thank you for the opportunity to testify.